SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

ANSWER
(STATE OF FLORIDA)

EARL FAIRCLOTH
ATTORNEY GENERAL of Florida

T. T. TURNBULL
Assistant Attorney General of Florida

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ATTORNEYS FOR THE DEFENDANT
STATE OF FLORIDA

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ANSWER
(STATE OF FLORIDA)

The State of Florida, a sovereign state of the United States of America, by and through its Attorney General, for its answer to the complaint herein, says:

1. It admits the allegations of fact in paragraph numbered I.

2. It admits the allegations of fact in paragraph numbered II but controverts the conclusion in subparagraphs 9(f), 12 and 15 that cancellation of a money order is legally accomplished "by the paying office notifying the sending office that payment has not been effected."

3. It is without actual knowledge of the matters of fact alleged in paragraph numbered III of the complaint, but for the purposes of this litigation they are admitted except insofar as they assume an effective cancellation of money orders by notice as noted in paragraph 2. of this answer.

4. It is without actual knowledge of the matters of fact alleged in paragraph numbered IV of the complaint, but for the purposes of this litigation they are admitted.

5. The State of Florida, for the purposes of its claim to the properties in question hereby adopts and repeats the allegations of fact of the plaintiff in its complaint herein insofar as the same may be applied to the rights and interests of the State of Florida in the disposition of the issues of law raised by the complaint, based on facts therein alleged, as to the situs of the unclaimed intangible personal property described.

6. The Comptroller of the State of Florida, now designated the Department of Banking and Finance by Chapter 69-106, Laws of Florida, is charged with the administration of the Florida unclaimed property statutes, Chapter 717, Florida Statutes, attached hereto as Exhibit A, enacted without subsequent substantive amendment (except §717.131) as Chapter 61-10, Laws of Florida, Acts of 1961, in a form substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under this law Florida claims it is entitled to the custody of unclaimed funds represented by the money orders in question which were sent to a Florida destination, or those sent to a payee whose last known address shown by the books of the debtor is in Florida, because the right of escheat vests in the state having jurisdiction of the payee or obligee in such transactions.

WHEREFORE, the defendant State of Florida prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(3) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to any other State pending further orders of this Court;

(4) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of destination of the money orders, as shown by the books and records of Western Union;

(b) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(c) The State of last known address of the sendee of a money order, as shown by the books and records of Western Union;

(d) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(5) That such judgment decree that no State other than the State or States designated under (4) above has the power to escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(6) That the defendant, the State of Florida, have such other and further relief as this Court may deem just.

EARL FAIRCLOTH
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T. T. TURNBULL
Assistant Attorney General

WINIFRED L. WENTWORTH
Assistant Attorney General

CHAPTER 717
DISPOSITION OF UNCLAIMED PROPERTY

717.01 Short title.
717.02 Definitions and use of terms.
717.03 Property held by banking or financial organizations.
717.04 Unclaimed funds held by insurance corporations.
717.05 Deposits and refunds held by utilities.
717.06 Undistributed dividends and distribution of business associations.
717.07 Property of business associations, and banking or financial organizations held in course of dissolution.
717.08 Property held by fiduciaries.
717.09 Property held by state courts and public officers and agencies.
717.10 Miscellaneous personal property held for another person.
717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.
717.12 Report of abandoned property.
717.13 Notice and publication of lists of abandoned property.
717.131 Petition for declaration of abandoned property.
717.14 Payments or delivery of abandoned property.
717.15 Relief from liability by payment or delivery.
717.16 Income accruing after payment or delivery.
717.17 Periods of limitation not a bar.
717.18 Sale of abandoned property.
717.19 Deposit of funds.
717.20 Claim for abandoned property paid or delivered.
717.21 Determination of claims.
717.22 Judicial action upon determination.
717.23 Election to take payment or delivery.
717.24 Examination of records.
717.25 Proceeding to compel delivery of abandoned property.
717.26 Administration.
717.27 Penalties.
717.28 Rules and regulations.
717.29 Effect of laws of other states.
717.30 Repeal.

717.01 Short title.—This act may be cited as the Florida disposition of unclaimed property act.

History.—§31, ch. 61-10.

717.02 Definitions and use of terms.—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company.

(2) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person

having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing, of electricity, water, steam, or gas, or for the transportation of persons or property.

*(9) ["Department" means the department of banking and finance.]

History.—§ 1, ch. 61-10; §§ 12, 35, ch. 69-106.

*Note.—In order to conform with § 12, ch. 69-106, the editors have substituted a definition of "department" for "administrator." This subsection will be appropriately amended by a subsequent reviser's bill.

717.03 Property held by banking or financial organizations.—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within fifteen years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within fifteen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

History.—§ 2, ch. 61-10.

717.04 Unclaimed funds held by insurance corporations.—

(1) LIFE INSURANCE.—

(a) Unclaimed funds, as defined in this subsection, held and owing by a life

insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (1), means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years,

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or

2. Corresponded in writing with the life insurance corporation concerning the policy.

(2) INSURANCE OTHER THAN LIFE INSURANCE.—

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal, or the claimant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (2), means all moneys held and owing by any fire, casualty or surety insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation either to an insured, a principal, or a claimant under any fire, casualty or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—§ 3, ch. 61-10.

717.05 Deposits and refunds held by utilities.—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not,

within fifteen years of such payment, been rendered.

History.—§ 4, ch. 61-10.

717.06 Undistributed dividends and distribution of business associations.—Any stock or other certificate of ownership, or any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within fifteen years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History.—§ 5, ch. 61-10.

717.07 Property of business associations and banking or financial organizations held in course of dissolution.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within fifteen years after the date for final distribution is presumed abandoned.

History.—§ 6, ch. 61-10.

717.08 Property held by fiduciaries.—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person.

History.—§ 7, ch. 61-10.

717.09 Property held by state courts and public officers and agencies.—All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

History.—§ 8, ch. 61-10.

717.10 Miscellaneous personal property held for another person.—All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became payable or distributable is presumed abandoned.

History.—§ 9, ch. 61-10.

717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History.—§ 10, ch. 61-10.

717.12 Report of abandoned property.—

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the department of banking and finance with respect to the property as hereinafter provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the department prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The department may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding September 30, 1961.

History.—§ 11, ch. 61-10; §§ 12, 35, ch. 69-106.

717.13 Notice and publication of lists of abandoned property.—

(1) Within one hundred twenty days from the filing of the report required by § 717.12, the department shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be

entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the department to which all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than twenty-five dollars unless it deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by § 717.12, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the department property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to which all further claims must be directed.

History.—§ 12, ch. 61-10; §§ 12, 35, ch. 69-106.

717.131 Petition for declaration of abandoned property.—

(1) After a finding that diligent search and inquiry for the owner thereof has been made, the circuit court may declare abandoned any personal property, tangible or intangible, upon the filing of a petition with the court, notwithstanding the fifteen-year waiting period provided for in this chapter. Such petition shall show:

(a) All proceedings specified by §§ 717.12 and 717.13 have been followed; and

(b) All salient facts regarding the abandoned property necessary for a judicial determination.

(2) If the petition is granted, the court shall order that all such property shall be delivered to the department as provided for in this chapter.

History.—§ 1, ch. 67-35; §§ 12, 35, ch. 69-106.

717.14 Payments or delivery of abandoned property.—Every person who has filed a report as provided by § 717.12 shall within twenty days after the time specified in § 717.13 for claiming the property from the holder pay or deliver to the department all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder with the time specified in § 717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History.—§ 13, ch. 61-10; §§ 12, 35, ch. 60-106.

717.15 Relief from liability by payment or delivery.—Upon the payment or delivery of abandoned property to the department, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the department to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the department pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment.

History.—§ 14, ch. 61-10; §§ 12, 35, ch. 69-106.

717.16 Income accruing after payment or delivery.—When property is paid or delivered to the department under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History.—§ 15, ch. 61-10; §§ 12, 35, ch. 69-106.

717.17 Periods of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the department.

History.—§ 16, ch. 61-10; §§ 12, 35, ch. 69-106.

717.18 Sale of abandoned property.—

(1) All abandoned property other than money delivered to the department under this act may be sold by it. Such sale shall be to the highest bidder at public sale in whatever place in the state affords in its judgment the most favorable market for the property involved. The department may decline the highest bid and re-offer the property for sale if it considers the price bid insufficient. It need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the department pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of title.

History.—§ 17, ch. 61-10; §§ 12, 35, ch. 69-106.

717.19 Deposit of funds.—

(1) All funds received under this act, including the proceeds from the sale of abandoned property under § 717.18 shall forthwith be deposited by the department in the state school fund of the state, except that the department shall retain in a separate account an amount not exceeding one hundred thousand dollars from which it shall make prompt payment of claims duly allowed by it as hereinafter provided. Before making the deposit it shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last knwon address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the state school fund, the department may deduct:

(a) Any costs in connection with sale of abandoned property,

(b) Any costs of mailing and publication in connection with any abandoned property.

History.—§ 18, ch. 61-10; §§ 12, 35, ch. 69-106.

717.20 Claim for abandoned property paid or delivered.—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the department.

History.—§ 19, ch. 61-10; §§ 12, 35, ch. 69-106.

717.21 Determination of claims.—

(1) The department shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, it shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by it and the reasons for its decision. The decision shall be a public record.

(2) If the claim is allowed, the department shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History.—§ 20, ch. 61-10; §§ 12, 35, ch. 69-106.

717.22 Judicial action upon determination.—Any person aggrieved by a decision of the department or as to whose claim the department has failed to act within ninety days after the filing of the claim, may commence an action in the circuit court of the second judicial circuit in and for Leon county, to establish his claim. The proceeding shall be brought within ninety days after the decision of the department or within one hundred eighty days from the filing of the claim if the department fails to act. The action shall be tried de novo without a jury.

History.—§ 21, ch. 61-10; §§ 12, 35, ch. 69-106.

717.23 Election to take payment or delivery.—The department, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which it deems to have a value less than the cost of giving notice and holding sale or it may, if it deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History.—§ 22, ch. 61-10; §§ 12, 35, ch. 69-106.

717.24 Examination of records.—The department may at reasonable times and upon reasonable notice examine the records of any person if it has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the department may issue subpoena to compel such person to testify and produce his records; said subpoena to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce his records, the department may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§ 23, ch. 61-10; §§ 12, 35, ch. 69-106.

717.25 Proceeding to compel delivery of abandoned property.—If any person refuses to deliver property to the department as required under this act, it shall bring an action in a court of

appropriate jurisdiction to enforce such delivery.

History.—§ 24, ch. 61-10; §§ 12, 35, ch. 69-106.

*717.26 Administration.—The administrator shall create a division of his office, to be known as the abandoned property office, for the purpose of administering the provisions of this act and of chapter 716. An appropriation shall be made biennially for the maintenance of such office, and to provide sufficient staff to adequately enforce the provisions of this law. Other divisions of the office of the administrator, as well as all state officers and employees generally, shall assist in the enforcement of this act in connection with the performance of their normal duties.

History.—§ 25, ch. 61-10.

*Note.—This section was rendered obsolete by § 12, ch. 69-106 and will be repealed by a subsequent reviser's bill.

717.27 Penalties.—

(1) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished as for a misdemeanor.

(2) Any person who wilfully refuses to pay or deliver abandoned property to the department as required under this act shall be punished as for a misdemeanor.

History.—§ 26, ch. 61-10; §§ 12, 35, ch. 69-106.

717.28 Rules and regulations.—The department is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

History.—§ 27, ch. 61-10; §§ 12, 35, ch. 69-106.

717.29 Effect of laws of other states.—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

History.—§ 28, ch. 61-10.

717.30 Repeal.—This act shall not repeal, but shall be additional and supplemental to the existing provisions of §§ 43.17-43.19, 402.17, and 550.164, chapter 716, §§ 731.28, 731.33.

History.—§ 30, ch. 61-10.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

PROOF OF SERVICE

I, T. T. TURNBULL, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13 day of Aug. , 1970, I served copies of the foregoing Answer, and also of the Brief in Support of the Answer, on each of the parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

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T. T. TURNBULL
Assistant Attorney General,
State of Florida

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

BRIEF IN SUPPORT OF ANSWER BY THE DEFENDANT STATE OF FLORIDA

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
QUESTIONS INVOLVED	3
SUMMARY OF ARGUMENT	3
ARGUMENT:	5
I. Unpaid money orders are intangible property held by this Court in *Texas v. New Jersey*, 379 U. S. 674, 682, 85 S. Ct. 626, 13 L. Ed2d 596, to be "subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records."	
II. The place of destination specified for delivery of such funds to the payee named in the money orders constitutes the last known address of the creditor as shown by the records of the debtor-holder, in the absence of any conflicting record evidence and until the money order is extinguished by issuance of a draft in payment or refund.	
CONCLUSION	11

TABLE OF CITATIONS

	Page
Arizona v. Talley, Trustee, 46 Ariz. 270, 50 P. 2d 560, 101 A. L. R. 664	8
Baldwin v. Missouri, 281 U. S. 586, 74 L. Ed. 1056, 50 S. Ct. 436, 72 A. L. R. 1303	6
Blodgett v. Silberman, 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410	6
Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 74 L. Ed. 371, 50 S. Ct. 98, 65 A. L. R. 1000	6
Finn v. Brown, 142 U. S. 56, text 67, 12 S. Ct. 136, 35 L. Ed. 936, text 939	9
Great Northern Railway Company v. Sutherland, 273 U. S. 182, 47 S. Ct. 317, 71 L. Ed. 596, text 599 and 600	9
Harris v. Balk, 198 U. S. 215, 49 L. Ed. 1023, 25 S. Ct. 625	6
Keyser v. Hitz, 133 U. S. 138, text 148 and 149, 10 S. Ct. 290, 33 L. Ed. 531, text 537	10
N. Y. Life Ins. Co. v. Dunlevy, 241 U. S. 518, 60 L. Ed. 1140, 36 S. Ct. 613	6
Security Savings Bank v. California, 263 U. S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A. L. R. 391	7
Texas v. New Jersey, 379 U. S. 674, 682, 85 S. Ct. 626, 13 L. Ed. 2d 596	3, 5, 11

	Page
Webster v. Upton, Trustee, 91 U. S. 65, text 72, 23 L. Ed. 384, text 388	10
Western Union Tel. Co. v. Esteve Bros. & Co., 256 U. S. 566, 65 L. Ed. 1094, 41 S. Ct. 584	7
Western Union Telegraph Co. v. Pennsylvania, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139	7
Western Union Tel. Co. v. Priester, 276 U. S. 252, 72 L. Ed. 555, 48 S. Ct. 234	7
Whitney v. Butler, 118 U. S. 655, text 660 and 661, 7 S. Ct. 63, 30 L. Ed. 266, text 268	10

TABLE OF CITATIONS

Constitution

	Page
Art. III, Sec. 2, *U. S. Const.*, U. S. C. Title 28, Sec. 1251(a)(1) and (b)(3)	1

Statutes

Chapter 717, Florida Statutes	2, 7
State of Arizona, Revised Code 1928, Sections 4304-4310	11

Texts

Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955	9, 11

STATEMENT OF THE CASE

This brief is in support of the defendant State of Florida's answer to the complaint filed by the Commonwealth of Pennsylvania against the States of New York, Florida, Oregon and Virginia and the Western Union Telegraph Company, a New York corporation. Art. III, Section 2, Const. U. S., U.S.C. Title 28, Sec. 1251(a)(1) and (b)(3).

The material facts admitted for the purpose of this litigation are that funds in excess of $1,500,000.00 are presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962. Western Union's books and records show the State or place of destination, as well as the State or place of origin, of every money order, but in many cases the records do not show any other address for the sender, the sendee (payee of the money order), or any address for the payee of drafts which have been issued but never presented for payment, either to senders or sendees of a portion of the money order transactions involved.

The stated condition of the money orders when purchased (Complaint Exhibit A-1 and A-2) was that they "will be canceled and refund made to the sender if payment cannot be made within 72 hours [or other applicable period] after receipt at the paying office . . . ." The statistical studies cited by plaintiff indicate that in the case of the money orders for which Western Union still holds funds, the Company has not been able to make refund by delivery of money or payment of a draft to the sender, and the only step taken toward cancellation of the money order is by the routine message, between the Company's own offices of destination and origin, that payment has not been effected. Assuming that whatever evidence the Court will receive in this cause will substantiate this fact, the problem

presented appears to be that of an obligation by the Company accruing to a sendee either in the state of his residence shown on the Company's records, or in the state of destination for the money order if the paying office is the only address shown for the sendee on such records. Except in those instances when delivery of a draft to either sendee or sendor may be regarded as terminating the first obligation and substituting a new one, the money order transactions involved in this proceeding are those in which the right or duty of cancellation and refund to the sender cannot be accomplished.

Under Chapter 717, Florida Statutes, (see Exhibit "A" attached to answer) intangible and other property, held or owed in Florida, in the ordinary course of business, for fifteen years or more, is deemed abandoned and is subject to state custody under said Chapter 717, Florida Statutes. Properties are deemed abandoned at the expiration of the period prescribed under the laws of Florida after having been held or owed in the usual course of business to a resident of Florida.

This case involves unclaimed moneys held by Western Union for persons entitled thereto under money orders purchased from Western Union in Pennsylvania. However, the questions in the case relate to all unclaimed moneys held by Western Union arising from money orders purchased from the Company. Florida asserts that the sendee is the owner of moneys held by Western Union for such money orders, and that where the money order directed that the amount of the money order be paid to a sendee in Florida, and no draft has been subsequently issued covering those funds, this State is the only State entitled under its laws to the escheat or custody of the unclaimed moneys.

QUESTIONS PRESENTED BY PLAINTIFF

I. (Jurisdiction determined.)

II. Does *Texas v. New Jersey*, 379 U. S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

SUMMARY OF ARGUMENT

As to Questions II and III:

The plaintiff Pennsylvania has succintly stated the positions of the parties: "Pennsylvania claims the right of escheat or custodial taking of these obligations as the State of origin of the telegraphic money orders; Florida and Oregon claim the right as the State of destination of the telegraphic money orders; Virginia claims where drafts have been issued in that State to the sendees of the money orders for the amount thereof. New York claims as the State of domicile of the Company."

With respect to the first question above stated, Florida would answer affirmatively, contending that the controversy in this case is governed by the decision in *Texas v. New Jersey*, 379 U. S. 674, because unpaid money orders are intangible property within the rule of this Court that such property is "subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records."

Application of that rule to the present controversy involves only the identification of the creditor and a determination of his last known address as shown by the debtor's records, if any. The destination or place specified for payment of a money order to the party named as payee, as to which Company records would appear to be invariably complete, provides a clear presumptive address for such payee when no conflicting or more specific address is shown for such payee on the debtor's records.

An equally clear and convenient basis for determining the second question above stated, the identity of the creditor in a money order transaction, may be provided by using the face of the money order itself, which constitutes a record identifying without question the party to whom the obligation is owed at the time the money order is issued. The condition with respect to refund does not in terms state a lapse or self-executing termination of the obligation to the payee, but instead requires affirmative action by the Company. In the transactions involved in this suit no refund or actual cancellation is effected, unless the issue and delivery of a draft to sendee or sendor supersedes and therefore terminates the obligation represented by a money order. The right of escheat in the State of the original payee-creditor's residence should otherwise accrue.

A rule in the present case is therefore proposed as follows: The funds in question in this case are subject to escheat or custodial taking only by the State of destination of a telegraphic money order when no other last known address for the payee is shown by the debtor's records, or by the State of last known residence of the payee of a draft issued in payment or refund of a money order as shown by the debtor's records.

ARGUMENT

II. Does *Texas v. New Jersey*, 379 U.S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

The controlling language of this Court in *Texas v. New Jersey*, 379 U.S. 674, at pages 681-682, is as follows:

> "We therefore hold that each item of property in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records. This leaves questions as to what is to be done with property owed persons (1) as to whom there is no record of any address at all, or (2) whose last known address is in a State which does not provide for escheat . . . in both situations the State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other State comes forward with proof that it has a superior right to escheat."

The rationale of the position urged by Florida as intervenor in *Texas v. New Jersey*, and adopted by the Court, 379 U.S. at p. 680-681, serves to emphasize the desirability of retaining the creditor-residence rule in the present controversy:

"The rule Florida suggests is that since a debt is property of the creditor, not of the debtor, fairness among the States requires that the right and power to escheat the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records. Such a solution would be in line with one group of cases dealing with intangible property for other purposes in other areas of the law. Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. It take account of the fact that if the creditor instead of perhaps leaving behind an uncashed check had negotiated the check and left behind the cash, this State would have been the sole possible escheat claimant; in other words, the rule recognizes that the debt was an asset of the creditor. The rule recommended by the Master will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out." Citing *N. Y. Life Ins. Co. v. Dunlevy*, 241 U. S. 518, 60 L. Ed. 1140, 36 S. Ct. 613; *Baldwin v. Missouri*, 281 U. S. 586, 74 L. Ed. 1056, 50 S. Ct. 436, 72 A. L. R. 1303; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 74 L. Ed. 371, 50 S. Ct. 98, 65 A. L. R. 1000; *Blodgett v. Silberman*, 277 U. S. 1, 72 L.Ed. 749, 48 S. Ct. 410; *Harris v. Balk*, 198 U. S. 215, 49 L. Ed. 1023, 25 S. Ct. 625.

The present controversy does involve a further refinement of the principle enunciated in the Texas case, because of the nature of the money order obligations here involved. The purchase of a money order, however, clearly creates an obligation due and owing to the payee or sendee. The nature of that obligation was considered by this Court in *Western Union Telegraph Co. v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139.

The money order conditions reflected by the exhibits in this cause, including the provision for cancellation and refund to the sender, are of course an essential and integral part of the contract required by the tariff regulations filed by Western Union with federal regulatory authorities. These conditions fix the obligations of the parties. *Western Union Tel. Co. v. Priester*, 276 U. S. 252, 72 L. Ed. 555, 48 S. Ct. 234; *Western Union Tel. Co. v. Esteve Bros. & Co.*, 256 U. S. 566, 65 L. Ed. 1094, 41 S. Ct. 584.

In administering Chapter 717, F. S., however, Florida does not seek to determine rights between the money order sender and sendee which would be governed by the refund and cancellation provisions. The Florida statute appears similar in nature and operation to the California statute considered by this Court in *Security Savings Bank v. California*, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391, in which this Court remarked "the state does not seek to enforce any claim against him (the depositor). It seeks to have the deposit transferred" to the State of California. In this type of proceeding the custody of the unclaimed or abandoned property is transferred from the custodian of the fund to the state, which will continue to hold the property in its custody, for the account of the person or persons entitled thereto.

In the case of the Florida statute, as well as those states which have adopted the Uniform Disposition of Unclaimed Property Act, the same being custodial acts and statutes, although the custody of the property is divested from the custodian thereof, such property is vested in the state, not as the owner of the entire title thereto, but as custodian or trustee for the person entitled thereto, that is its owner. In the case of those states having the escheat type statutes, not only is the custody of the property moved from the custodian to the state, but the title to the property, or the right thereto, is transferred to the state and the person entitled thereto, because of the escheat, is divested of his title to the fund, which escheat is under the terms of the statute binding on the heirs, personal representative and assigns of the said owner. Proceedings designed to escheat the property of nonresident creditors are questionable and do not divest the title of the creditor where there is no jurisdiction over the debt or obligation due him, or of him personally. Here the situs of the debt, not of the fund for its payment, is material and jurisdictional. Under the Uniform Act, including the Florida statute, the person entitled to the fund does not appear to be a necessary party to the custodial procedure, while under the escheat statutes he is a necessary party.

In further substantiation of Florida's contention that the state of destination shown on Company records should be accepted presumptively as the last known Company address of the money order payee, the primary creditor of Western Union as a fiduciary debtor, consideration should be given to an analogous rule as to presumption of continuing residence. The Supreme Court of Arizona in Re. Hull Copper Company (*Arizona v. Tally, Trustee*), 46 Ariz. 270, 50 P. 2d 560, 101 A. L. R. 664, had before it a claim by the State of Arizona to certain shares of stock issued by the Hull Copper Company, to purchasers of such stock, which corporation was being liqui-

dated and the owners of such shares of stock could not be located. These stockholders were stockholders of record, such record reflecting their names and addresses as of the date of issuance; however, their whereabouts were unknown as of the date of the liquidation and distribution of the assets of the corporation. This stock consisted of some six hundred shares of stock having a value of $46,309.20; which the State of Arizona claimed under its Sections 4304-4310, Revised Code, 1928, as being unclaimed by the remaining stockholders, who contended that it should be distributed to them in the ratio of their stock ownership. The stock in question appears to have been issued to stockholders with post office addresses or locations beyond the boundaries of the State of Arizona. In its opinion the said court said that "if the claim of the appellees (other stockholders) cannot be sustained, still less, we think, can that of the state, as set forth in its pleadings, be upheld. In the first place, the only evidence of the residence of these stockholders is that they were nonresidents of the State of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and an escheat proceeding in this state would not lie."

In *Great Northern Railway Company v. Sutherland*, 273 U.S. 182, 47 S. Ct. 317, 71 L. Ed. 596, text 599 and 600, this Court stated that corporate "stock is presumed to be owned by the registered owner and that, where stock is stated to be held by the registered owner for another named person, the latter is presumed to own the whole beneficial interest." In *Finn v. Brown*, 142 U.S. 56, text 67, 12 S. Ct. 136, 35 L. Ed. 936, text 939, this Court said: "It is undoubtedly true, as contended by the defendant, that, as the 50 shares of stock were transferred to him originally without his knowledge and consent, he had a right to repudiate the transaction: but he is presumed to be the owner of the stock when his name appears upon the books of the bank as such owner, and the burden of proof is upon him to

show that he is in fact not the owner." To the same effect see also *Keyser v. Hitz*, 133 U. S. 138, text 148 and 149, 10 S. Ct. 290, 33 L. Ed. 531, text 537; *Whitney v. Butler*, 118 U. S. 655, text 660 and 661, 7 S. Ct. 63, 30 L. Ed. 266, text 268; *Webster v. Upton*, Trustee, 91 U. S. 65, text 72, 23 L. Ed. 384, text 388. In 31A C. J. S. 222-225, Section 124(1), it is said: "Proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time . . . . [I]t will be inferred that a given fact or set of facts, the existence of which at a particular time is once established in evidence, continues to exist so long as such facts usually do exist . . . . Inferences of continuance are merely inferences of fact and may, therefore, be rebutted."

The last known place of residence of the creditor will, for the purposes of custody and escheat proceedings by a state, be presumed to continue until impeachment by competent evidence showing an actual change thereof by the said creditor.

CONCLUSION

The defendant State of Florida proposes a rule in substantially these terms:

> "The funds in question in this case are subject to escheat or custodial taking only by the State of destination of a telegraphic money order when no other last known address for the payee is shown by the debtor's records, or by the State of last known residence of the payee of a draft issued in payment or refund of a money order as shown by the debtor's records."

Reasoning and authorities in support of this rule necessarily exclude the conflicting arguments advanced by other parties to this cause. It is submitted that the rule proposed by Florida giving the right of custody to the State of destination of a telegraphic money order, in the absence of a more specific debtor record of the creditor's last known address, is a rule fully consistent with the principles established by this Court in *Texas v. New Jersey*.

Respectfully submitted,

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